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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.Y. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.Y. et al., Defendants and Appellants; J.Y. et al., Appellants.	E065548 (Super.Ct.No. J252814, J252815, J252816, J252817 & J252818) O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Annemarie G. Pace, Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and Appellant M.Y.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant J.Y.

Konrad S. Lee, under appointment by the Court of Appeal, for Appellants.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel, for Plaintiff and Respondent.

On February 29, 2016, the juvenile court denied defendant and appellant, J.Y.'s (Father), Welfare and Institutions Code section 388[1] petition. On the same date, the court impliedly denied child 1 (born in July 2004) and child 2's (born in December 2005) section 388 petition and terminated Father's and defendant and appellant, M.Y.'s (Mother; collectively Parents), parental rights to child 3 (born in May 2008), child 4 (born in December 2009), and child 5 (born in August 2013).

On appeal, Father contends the court abused its discretion in denying his section 388 petition and in finding the parental bond exception to termination of parental rights inapplicable. Mother and children 1 and 2 join Father's argument regarding the parental bond exception and maintain the court erred in finding the sibling relationship exception to termination of parental rights inapplicable. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

On January 8, 2014, personnel from plaintiff and respondent, San Bernardino County Children and Family Services (CFS), received two separate referrals regarding

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Parents, one for general neglect and the other for physical abuse. The children were reported to be dirty and hungry, the home in a deplorable state, and Father was alleged to have spanked the children with wire hangers. A social worker and a police officer went to the home on January 13, 2014. They found the home uninhabitable with piles of clothing, trash, rotted food, and debris piled waist high throughout the house. The refrigerator was covered in mold and contained rotten meat. The home was infested with roaches.

Children 1 and 2 reported that Father spanked them with hangers daily when they got in trouble. They reported that Parents fought often and that on Christmas Eve Father had pushed Mother, who then fell into one of the children. Parents reported that the children frequently tried to run away.

Mother admitted smoking marijuana while pregnant with and breast-feeding child 5. Child 5 had tested positive for marijuana.

Parents had a prior case history with CFS, including a total of 15 previous referrals spanning from March 9, 2007 to August 25, 2013, including allegations of general neglect, caretaker incapacity, physical abuse, sexual abuse, and emotional abuse. Allegations of general neglect, caretaker incapacity, and emotional abuse had previously been substantiated. The remaining allegations had been deemed unfounded.

The juvenile court had previously removed children 1 and 2 from Parents' custody from March 2007 until April 2008. The juvenile court removed children 1 through 4 between March 2011 and July 2013. Between 2010 and 2011, CFS had a voluntary

family maintenance plan with Parents due to allegations of domestic violence, Mother's explosive behavior, and Parents' lack of stable housing. CFS again maintained a family maintenance plan with Parents between August 2013 and October 2013. Parents both had a previous criminal conviction for willful harm or injury to a child.

CFS personnel took the children into protective custody. The three youngest children were placed in a home together. The two older children were placed in separate homes because they had exhibited behavioral problems during previous removals.

On January 15, 2014, CFS personnel filed juvenile dependency petitions alleging a risk of serious physical harm to the children, domestic violence in their presence, an uninhabitable residence, Parents' history of substance abuse, and Parents' previous juvenile dependency history. On January 16, 2014, the juvenile court detained the children and ordered Parents to drug test that day.

In the jurisdictional and dispositional report filed on February 4, 2014, the social worker recommended that the juvenile court find the allegations true, except those involving physical abuse; sustain the petition; remove the children; and provide reunification services to Parents. On January 23, 2014, the social worker had provided Parents with cleaning supplies and instructions on how to render the home habitable. As of January 27, 2014, the social worker found the home in the same deplorable condition. Parents were arrested for willful cruelty to a child on January 13, 2014.

Father tested negative for drugs on January 16, 2014, but tested positive for marijuana on January 24, 2014. Mother tested positive for drugs on both dates. Children

1 and 2 now deny they were hit by Father with hangers. The social worker noted Parents had previously completed counseling, domestic violence, and parenting classes in prior dependency actions, yet failed to benefit from them.

Parents visited with the children on January 22, 2014. The visit went well with Parents interacting with the children appropriately. The children visited with each other thereafter when Parents were incarcerated. Pursuant to a February 25, 2014, mediation report, CFS agreed to dismiss the abuse allegations. Father submitted on some allegations and others as rewritten. Mother contested all allegations. Father submitted on a disposition involving reunification services to include individual counseling, domestic violence counseling, substance abuse treatment, parenting classes, and random drug testing. Mother contested all dispositional recommendations.

The social worker provided further information to the court on March 10, 2014. Mother had tested positive for marijuana twice. The social worker visited the home again on March 6, 2014, and found it in substantially the same condition as the day the children were taken into protective custody.

On March 10, 2014, the court dismissed the physical abuse allegations, found the remaining allegations true as amended, removed the children from Parents' care, and ordered reunification services for Parents. In the status report filed on August 29, 2014, the social worker reported Parents were homeless. Parents had engaged in services, but Mother admitted they continued to use methamphetamine and marijuana. Parents had failed to show for several drug tests. Visitation with the children was going well.

At the six-month review hearing on September 9, 2014, Mother denied she or Father were using drugs and did not wish to participate in a drug program. The court continued reunification services.

In the status review report filed on February 19, 2015, the social worker reported Parents were residing in sober living homes. Mother had completed individual counseling and a parenting class. Mother failed to show for random drug tests on four occasions; she admitted that on one of those occasions she and Father had used methamphetamine and marijuana. Father tested negative once, but failed to show for three tests.

The social worker noted that Parents maintained regular visitation and the children would benefit from a continuing relationship with Parents. All the children expressed a desire to be reunited with Parents. Nevertheless, the social worker noted the children "appear to be thriving in their respective Foster Family homes." The foster parents for the youngest three children expressed a willingness to engage in the adoption process. On March 13, 2015, the juvenile court continued Parents' reunification services.

In a minute order dated May 28, 2015, the social worker noted that Parents had moved into multifamily housing. The social worker observed: "When [I] received the case [in] late February 2015, the visits were taking place at the CFS office and they were observed to be chaotic with the parents having little to no control over the children. However, they have been at visitation centers since March and have shown drastic improvements in the quality of their visits as well as the effectiveness of their parenting."

The social worker recommended that Parents begin to receive unsupervised visitation with the children at their home with authority to begin overnight and weekend visitation.

In the status review report filed on July 13, 2015, the social worker recommended terminating reunification services and providing services under a permanent planned living arrangement. She recommended permitting the eldest child to have an extended, 30-day visit with Parents. If that went well, the social worker suggested the second eldest child have the same duration extended visit. If that too went well, the social worker advocated for placing all the children for an extended visit with Parents.

Since the last report, Mother had tested positive for marijuana four times and negative once. Mother was terminated from her outpatient treatment program. She indicated an intent to obtain a prescription for medical marijuana. Mother had completed 31 weeks of classes of her 52-week domestic violence and child abuse course required by her probation. Father tested positive for marijuana once and negative once. He had obtained a prescription for medical marijuana. He completed a 12 session cooperative parenting class.

The social worker noted that despite Parents' use of marijuana, they showed a "benefit from services and . . . commitment and dedication to the visits and their children." She observed that Parents had maintained regular visitation and the children would benefit from continuing the relationship.

The social worker also reported that children 3 through 5 "appear[] to be bonded to [their] foster parents and family members in the home. [The social worker] has observed that minor[s] [are] integrated [in]to the foster family. Minor[s] appear[] to be well cared for and [are] receiving love and attention; [*sic*] key to developing a good self-esteem and confidence. Minor[s] appear[] to be happy in the home and [are] able to express [themselves] when [they] need[] something. [Their] foster parents are always involving [them] in outings, church[,] and family activities. Foster parents are doing [*sic*] an excellent role with their support and loving care."

At a hearing on July 16, 2015, the children's counsel requested a continuance as child 1 was away at camp. Counsel noted Mother continued to use marijuana without a prescription and Parents did not have permanent housing. The court ordered Parents to drug test that day. Parents both tested positive for marijuana.

In an addendum report filed on September 4, 2015, the social worker recommended termination of Parents' reunification services. Mother tested positive for marijuana on three occasions. She was thereafter referred to a higher level of care in her outpatient treatment program. Mother then became hostile and resistant toward the staff, resulting in her termination from the program. Mother had completed 41 weeks of the 52-week domestic violence and child abuse program.

Father tested positive for marijuana on three occasions. Parents were terminated from their Assembly Bill No. 109 housing program[2] and became homeless while child 1 was on her 30-day extended visit with them.[3] The social worker instructed Parents to return child 1 to her former foster care placement.

At the hearing on September 4, 2015, the children's counsel submitted on the social worker's recommendation. The children's counsel requested appointment of separate counsel for children 1 and 2. The court granted the request. The court terminated Parents' reunification services. The court set the section 366.26 hearings for children 1, 3, 4, and 5.[4] The court ordered unsupervised visits for Father separate from Mother.

In a minute order dated December 14, 2005, the social worker noted Mother had four negative drugs test. Mother tested positive for alcohol on one date. Father had one negative test for drugs and one positive test for alcohol. The children informed the social

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[2] Assembly Bill No. 109 (2010-2011 Reg. Sess.), the so-called realignment bill, provided for municipalities to take over funding for certain criminal justice costs pertaining to individuals convicted of "low level" offenses. Some counties began providing funds for transitional housing for low level offenders once they were released from jail. (Cal. Dept. Health Care Services, AB 109 Implementation: The First Year (Feb. 5, 2013), pp. 5, 15, 17<http://www.dhcs.ca.gov/services/MH/Documents/AB%20109%20Imp%20Feb%202013_FINAL.pdf>[as of September 1, 2016].)

[3] Parents were sleeping in their truck and a tent in the park with child 1.

[4] Child 2 had made allegations of sexual abuse while she was in foster care during the proceedings. CFS had substantiated the allegations. The court appointed a guardian ad litem and separate attorney for child 2 for purposes of investigating the allegations. This placed child 2 on a separate dependency track from the remaining children.

worker Father had been taking them to Parents' mutual residence, though the children denied Mother was there during visits. The social worker requested that Father's visits with the youngest three children be changed from unsupervised to supervised and be decreased to two times monthly. The court reduced visitation as requested noting: "Father has relapsed and is drinking alcohol."[5]

On December 29, 2015, Mother filed a section 388 petition requesting reinstatement of reunification services and return of the children to her custody as soon as possible. Mother alleged she had stable housing, had a stable income, was in treatment, had been testing clean for illegal drugs since October 2015, and would graduate from treatment in January 2016. Mother asserted the requested change was in the children's best interest because they would be together as a family.

On the same date Mother filed the petition, the juvenile court denied it. The court noted the petition did not state new evidence or a change of circumstances, the requested change was not in the best interests of the children, and Mother attached no information to show a change with respect to her substance abuse and domestic violence issues.

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[5] While Father agreed to substance abuse treatment and random testing as part of his reunification services, his case plan required him only to refrain from the use of *illegal* drugs. Mother's case plan is identical in this respect to Father's. It is unclear why Father's *legal* use of medical marijuana and alcohol and Mother's *legal* use of alcohol would be of concern to the social worker and juvenile court. (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 452-453 [mere use of medical marijuana will not support a jurisdictional finding bringing a minor within the jurisdiction of the juvenile court]; accord, *In re Drake M.* (2012) 211 Cal.App.4th 754, 764; *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 [beyond mere use, even a finding that a parent was an alcoholic would not, alone, support dependency jurisdiction].)

Also on the same date, the social worker filed a section 366.26 report on behalf of children 3 through 5. She recommended Parents' parental rights be terminated and the children be found adoptable. Children 3 and 4 "express how they love their room and they enjoy being in their current home and do not want to leave." The social worker observed that the children had developed a mutual attachment with the prospective adoptive parents (PAPs) who were dedicated to them and committed to raising them. The prospective adoptive father described his relationship with children 3 through 5 as good and close. He said he was a father figure to them.

Children 3 through 5 had visits with children 1 and 2 when they visited with Parents. According to children 3 and 4, children 1 and 2 were sometimes mean to them during visits. Child 3 attended the same school as child 1; child 3 reported that her friends sometimes did not wish to be with her because child 1 was around and treated them meanly.

The social worker noted that Parents sometimes arrive late to visits. A visit on December 16, 2015 was cancelled due to Parents' tardiness. Children 1 and 2 were not happy about the cancellation; children 3 and 4 were sad, but accepting. Father received a make up visit. Overall, visitation was reported to be good.

Also on December 29, 2015, the social worker filed a separate section 366.26 report as to child 1. The social worker recommended a permanent planned living arrangement for child 1. Child 1 was in her third placement since she was taken into protective custody. Parents were having supervised visitation with the children once

weekly. On September 27, 2014, child 2 asked to leave the visit early "because she felt that her sister and father were putting her down." After CFS personnel ended the visit with child 2, Mother began to yell and curse at staff. Mother refused to leave until the police arrived.

On January 4, 2016, the juvenile court relieved the children's counsel at her request. The juvenile court appointed separate counsel to represent, respectively, children 1 and 2 and children 3, 4, and 5. Counsel for child 1 indicated that child 1 was not in favor of the adoption of children 3, 4, and 5. Counsel indicated an intention to file a section 388 petition. Counsel also reported that child 1's long-term goal was to return to the custody of Parents.

On February 3, 2016, child 1's court-appointed special advocate filed a report in which she noted that Parents had left child 1 with the impression that they were the only ones entitled to make decisions regarding her and that the prospective adoptive mother and social worker had no say in those matters. Father reportedly missed three visits; Mother missed one; and Parents were regularly late 30 to 60 minutes to visits. Parents attempted to take child 1 outside of the prospective adoptive mother's sight and hearing during supervised visitation.

On the same date, counsel for children 1 and 2 filed a section 388 petition requesting a permanent plan for children 3 through 5 which did not involve adoption. Counsel asserted children 1 and 2 had a strong relationship with children 3 and 4. The

social worker had reported, via e-mail, that children 1 and 2 wanted all siblings returned to Parents' care rather than the younger three adopted.

On February 24, 2016, the social worker filed a response recommending the court deny children 1 and 2's section 388 petition. The social worker noted that children 1 and 2 had significant behavioral problems which rendered them unadoptable. The social worker observed: "The sibling bond is stronger between the younger siblings who have consistently lived together with each other. The older two children have only lived with the younger children on a limited basis only for about a year of the last [five] years. Their entire time in placement, the younger children have remained together with [children 1 and 2] in a separate placement with sibling visits. It would not be in the best interest to leave [the younger three children] without permanency based on the wishes of their siblings, who are not adoptable at this time." The younger children were described as "flourishing" in the PAPs' home in which they had been placed since January 13, 2014.

The social worker reported that on both November 23 and December 21, 2015, children 3 and 4 reported they were doing well and enjoyed living in the PAPs' home; that they did not wish to return to Parents' home, but wished to continue visiting with them. Children 3 and 4 reported that child 1 bullied them, but that visits with child 2 were better because she was nicer. Child 2 wanted to terminate a visit with child 1. The social worker reported that Parents often arrived late to visits and a visit on February 4, 2016 had been terminated due to Parents' tardiness.

Father had a certificate reflecting completion of six months of an outpatient substance abuse treatment program. Mother had a certificate reflecting completion of three months of outpatient treatment. Mother had completed the 52-week child abuse program.

Also on February 24, 2016, the social worker filed a response in which she recommended the court deny Father's section 388 petition. Father apparently had a positive drug test on December 7, 2015.[6]

On February 29, 2016, the court held the hearing on Father's section 388 petition. The court noted that Father's issue "is not just housing. It's substance abuse. It's domestic violence. It's . . . years and years of the same issues that have not yet been resolved." The court found no change in Father's circumstances and that the requested relief was not in the children's best interests "based on the entire history of the case." Thus, the court denied Father's petition.

The court noted it would hear children 1 and 2's section 388 petition concurrently with the section 366.26 hearing. Father testified that prior to the switch from unsupervised to supervised visitation, he had several months of visitation with the youngest three children for two to four hours, twice weekly. Once the court ordered visitation supervised, his visitation had been reduced to two hours weekly. The younger children recognized him as their father. Children 1 through 4 had lived together for

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[6] The report does not indicate for which substance Father tested positive. It reflects that the laboratory report is attached to the report, but no such report is found in the record.

several years before they were removed from his custody. Although there was some sibling rivalry, the children missed each other, loved each other, and had a very strong bond.

Mother testified the children call her "mom." She noted that the children visited with one another during Parents' visits and that Parents also had telephone calls with all the children.

The juvenile court took children 3 and 4 into chambers. The children indicated they liked where they lived, but both wanted to go back to live with Parents to whom they referred to as "mom" and "dad." Child 4 noted that "my mom and dad give[] me anything I want when I behave. And I always behave." Child 3 said: "We are going to get a toy." Child 4 stated she wanted to go back with Parents because it is so much fun "and because we get to have so much stuff." They said they had spoken just prior to the hearing with Parents about where they were going to be living. Parents told them Parents wanted them back.

Children 3 and 4 reported they did not have much fun where they lived now because the PAPs "only let us watch a little TV because we have school and we have chores . . . ." They said they did not like their school because there were bullies. Nevertheless, they stated the PAPs treated them well.

Child 1 testified she loved her younger siblings, wanted to continue her relationship with them, and was afraid if they were adopted she would lose contact with them. The siblings had been in her life for most of their lives; they play together. Child

1 sees children 3 and 4 at school for breakfast more than once weekly. She noted all the children call Parents' "mom" and "dad." Child 2 testified she enjoyed visiting with her siblings, loved them, wanted to continue their relationship, and wanted to live with them.

Counsel for children 3 through 5 argued that any sibling bond did not outweigh the benefits of adoption. Counsel for CFS noted that "over the past five years, the kids have only lived together for one year total. And [child 5] for only four months out of that year." The court noted: "With respect to the sibling bond, you're all right. This is not an easy case. These are the hard ones." "[C]learly there is a relationship there, but as pointed out in the report, that relationship is one year out of five that they have lived together."

The court observed: "These kids have a stable environment for the first time in their life, essentially. They have been in that placement for two years." "[W]hen you compare it to the permanency and stability that they have in their lives now, I just can't find that the sibling bond outweighs the benefit of legal permanence for them."

With respect to the parental bond exception to termination of parental rights, the younger children's attorney argued the parent-child bond did not outweigh the benefits of permanence. The court found that Parents were more than friendly visitors and there would be a benefit to the children of continuing their relationship with Parents. Nevertheless, the court found there would be no deprivation of a substantial attachment such that the children would be greatly harmed to the degree which would overcome the statutory preference for adoption; the stability provided by adoption superseded any

benefit of a continued relationship with Parents. Thus, the court found the parental bond exception inapplicable and terminated Parents' parental rights as to children 3 through 5.

II. DISCUSSION

A. *Father's Section 388 Petition*

Father contends the court abused its discretion in denying his section 388 petition. We disagree.

"The juvenile court may modify an order if a parent shows, by a preponderance of the evidence, changed circumstance or new evidence and that modification would promote the child's best interests. [Citations.] This is determined by the seriousness of the problem leading to the dependency and the reason for its continuation; the strength of the parent-child and child-caretaker bonds and the time the child has been in the system; and the nature of the change of circumstance, the ease by which it could be achieved, and the reason it did not occur sooner. [Citation.] After termination of services, the focus shifts from the parent's custodial interest to the child's need for permanency and stability. [Citation.] 'Whether a previously made order should be modified rests within the dependency court's discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established.' [Citation.] The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]" (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Section 388 can provide "an 'escape mechanism' when parents complete a reformation in the short, final period after the termination of reunification services but before the actual termination of parental rights." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 528.) "Even after the focus has shifted from reunification, the scheme provides a means for the court to address a legitimate change of circumstances while protecting the child's need for prompt resolution of his custody status." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) However, the best interests of the child are of paramount consideration when a petition for modification is brought after termination of reunification services. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) "A petition which alleges merely changing circumstances and would mean delaying the selection of a permanent home for a child to see if a parent, who has repeatedly failed to reunify with the child, might be able to reunify at some future point, does not promote stability for the child or the child's best interests. [Citation.]" (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.)

Chronic substance abuse is generally considered a serious problem and, therefore, is less likely to be satisfactorily ameliorated in the brief time between termination of services and the section 366.26 hearing. (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at pp. 528, 531, fn. 9 ["It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform."]; *In re Amber M.*, *supra*, 103 Cal.App.4th at p. 686 [no abuse of discretion in denying § 388 petition where mother established only a 372-day period of abstinence]; *In re Cliffton B.* (2000) 81 Cal.App.4th 415, 423 ["seven

months of sobriety since . . . relapse . . . , while commendable, was nothing new."]; *In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223 ["To support a section 388 petition, the change in circumstances must be substantial. [Citation.] [A parent's] recent sobriety reflects 'changing,' not changed, circumstances. [Citation.]"].)

Here, the bases for the court's jurisdiction over the children included the inability of Father to maintain a stable and clean residence, Father's history of substance abuse, Father's engagement of domestic violence in the presence of the children, and Father's previous history with CFS.

Nevertheless, Father continually had difficulty establishing any long-lasting improvement in any of these areas. Nearly two months after the children had been taken into protective custody, Father's residence was still in a substantially similar deplorable condition. A month later, Father was homeless, living in his car. Father later obtained housing, which was terminated, again leaving him homeless.[7] Father had been involved in a family maintenance plan between 2010 and 2011 which also involved his inability to provide the children with a stable home. Not until Father filed his section 388 petition on February 15, 2016, did he allege he had stable housing, albeit as of November 24, 2015. Nonetheless, Father had failed to demonstrate a prolonged period of stable and *appropriate* housing.

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[7] During the period between February 19, 2015 and September 4, 2015, Parents' housing was variously described as a sober living home, multifamily housing, and Assembly Bill No. 109 housing. It is unclear from the record whether these represent a single or several different living arrangements.

Moreover, as the court acknowledged, housing was not the only issue. Father had a history of substance abuse, including marijuana and methamphetamine, even during the dependency proceedings. Father had a documented, continuous history of testing positive for substances or missing tests altogether. Indeed, even after completing a six-month outpatient drug treatment program, Father still had a positive drug test as late as December 7, 2015. Father failed to establish any negative drug test in the three months preceding the hearing on his section 388 petition.

Furthermore, Father failed to allege completion of the domestic violence component of his case plan. Thus, Father failed to allege or prove a change of circumstances from the situation which existed at the time the children were removed such that it would be in the children's best interests to grant the relief requested. The court acted within its discretion.

B. *The Sibling Relationship Exception*

The Parents and children 1 and 2 argue the court erred in declining to find the sibling relationship exception to termination of parental rights applicable. We disagree.

"Reflecting the Legislature's preference for adoption when possible, the 'sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a "compelling reason" for concluding that the termination of parental rights would be "detrimental" to the child due to "substantial interference" with a sibling relationship.' [Citation.] Indeed, even if adoption would interfere with a strong sibling relationship, the

court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption. [Citation.]" (*In re Celine R.* (2003) 31 Cal.4th 45, 61.) Parents have the burden of establishing the applicability of the exception. (See *In re Megan S.* (2002) 104 Cal.App.4th 247, 252.)

In reviewing challenges to a trial court's decision as to the applicability of these exceptions, we will employ the substantial evidence or abuse of discretion standards of review depending on the nature of the challenge. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.) We will apply the substantial evidence standard of review to evaluate the evidentiary showing with respect to factual issues, such as whether the child has a close and strong bond with a sibling (for the sibling relationship exception). (*Id.* at p. 1315; § 366.26, subd. (c)(1)(B)(i), (v).) However, a challenge to the trial court's determination of questions such as whether, given the existence of a sibling relationship, there is a compelling reason for determining that termination of parental rights would be detrimental to the child "'is a quintessentially discretionary determination.'" (*In re Scott B.* (2010) 188 Cal.App.4th 452, 469.) We review such decisions for abuse of discretion. (*Ibid.*)

In the dependency context, both standards call for a high degree of appellate court deference. (*In re Scott B., supra,* 188 Cal.App.4th at p. 469; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.) "[T]he ultimate question is whether adoption would be detrimental to the adoptive child, not someone else." (*In re Celine R., supra,* 31 Cal.4th

at p. 55.) "'The author of the legislation adding the sibling relationship exception anticipated that "use of the new exception 'will likely be rare,'" meaning "that the child's relationship with his or her siblings would rarely be sufficiently strong to outweigh the benefits of adoption."' [Citations.]" (*In re D.O.* (2016) 247 Cal.App.4th 166, 174.)

Here, the juvenile court would have had to find adoption detrimental to the adoptable children, children 3 through 5, in order to find the sibling relationship exception applicable. Although the court found the children had a bond with their siblings, it found that bond did not outweigh the permanence and stability which the adoptive placement afforded children 3 through 5. The court acted within its discretion.

Here, the younger children had lived substantial portions of their lives away from Parents. Child 5 was just shy of five months old when he was taken into protective custody. He never thereafter lived with Parents. Children 3 and 4 had previously been removed from Parents' custody for over a year. They were ages eight and seven, respectively, when removed in the instant case. At the time the court terminated Parents' parental rights, children 3 and 4 had been living with the PAPs since January 13, 2014, over two years earlier. Thus, children 3 and 4 had lived a substantial portion of their lives outside the custody of Parents.

Early on, the children were observed to be thriving in the PAPs' care. Later still, the social worker reported that the children were bonded to the PAPs, integrated into the family, were well cared for, and receiving love and attention. The PAPs were observed as occupying an excellent role in their support and care of the children. Further on,

children 3 and 4 expressed their affection for their home with the PAPs and did not wish to leave. The children were "flourishing" in the home. The social worker noted the PAPs and children had developed a mutual attachment; the prospective adoptive father was a father figure to them.

Sufficient evidence supported the court's determination that despite the existence of a sibling bond, the permanence afforded the children in the prospective adoptive home outweighed any benefit of continuing the sibling relationship. As the court noted: "These kids have a stable environment for the first time in their life, essentially. They have been in that placement for two years."

Although children 3 and 4 later countermanded some of their previous statements that they wished to stay in the PAPs' home, they still indicated they liked living with the PAPs and that the PAPs treated them well. Moreover, the court noted that children 3 and 4's expressions of a desire to return to Parents was largely based on the "fun" they had with them and the "stuff" they would get from them. The expressions of dislike with the PAPs' home were based on the PAPs limiting their television time and making them do homework and chores. As the court observed, the PAPs were "acting like parents." Thus, the court acted within its discretion in determining that the children would suffer no detriment if parental rights were terminated.

C. *Parental Relationship Exception*

Parents contend the court erred in finding the parental relationship exception to termination of parental rights inapplicable. Children 1 and 2 join Parents' argument. We disagree.

Once reunification services have been terminated and a child has been found adoptable, "adoption should be ordered unless exceptional circumstances exist." (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) Under section 366.26, subdivision (c)(1)(B)(i), one such exception exists where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." A beneficial relationship is established if it "'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.'" (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) "The parent has the burden of proving that termination would be detrimental to the child . . . ." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; *In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1207.)

"'[T]he court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly

harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' [Citation.]" (*In re C.F.* (2011) 193 Cal.App.4th 549, 555.)

"[I]t is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350; accord, *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 51.) "We determine whether there is substantial evidence to support the trial court's ruling by reviewing the evidence most favorably to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. [Citation.] If the court's ruling is supported by substantial evidence, the reviewing court must affirm the court's rejection of the exceptions to termination of parental rights . . . ." (*In re S.B.* (2008) 164 Cal.App.4th 289, 297-298.)

For the same reasons discussed above with respect to the sibling relationship exception, Parents failed their burden of establishing termination of their parental rights would be detrimental to children 3 through 5. Again, parents had repeatedly failed to provide their children with a safe and stable home. Parents had continuing issues with substance abuse. They failed to benefit from previous domestic violence counseling and failed to complete such counseling in the instant case.

Child 5 lived most of his life with the PAPs. Children 3 and 4 had lived substantial portions of their lives with the PAPs. The children had expressed a desire to remain in the PAPs' home with whom they were bonded and were observed to be "thriving" and "flourishing." Again, as the court noted: "These kids have a stable

environment for the first time in their life, essentially. They have been in that placement for two years." Thus, substantial evidence supported the court's finding that termination of parental rights would not be detrimental to children 3 through 5.

III. DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

MILLER
J.

CODRINGTON
J.